IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9599 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTLAL I JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9599 of 1996

MRS VASAVDATTA BHATT for Petitioner No. 1

MS. NANDINI JOSHI, AGP, for Respondent No. 1-2, 4

MR RK MISHRA for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 06/09/2001

ORAL JUDGEMENT

Shri Amrutlal Ishwarlal Joshi-petitioner has filed this petition for a writ of mandamus or writ in the nature of mandamus praying respondent No. 3 Shri Kalkadevi Bai Vidyalaya be directed to give benefit of

Government Resolution dated 18.1.1991 issued by the Gujarat Government and amended from time to time which has been applicable to the petitioner's case. She further prayed that the petitioner be paid by the respondent authorities in accordance with the direct payment scheme above referred with effect from 1.4.1995 and any other relief in this behalf.

2. When the matter was placed for hearing before this court on 6.1.1997 this court passed the following order.

"Miss Vasavdatta Bhatt, ld. advocate for the petitioner.

Issue notices to the respondents as to why this Spl. Civil Application may not be admitted and finally disposed of. Notice is made returnable on 20.1.1997. Record of Spl. Civil Application No. 10207/94 decided on 1.4.95 may be tagged."

2.1 Thereafter on 31.1.1997 this court also granted the prayer of amending of the petition. Ms. Joshi, learned AGP appears on behalf of respondent Nos. 1, 2 and 4 whereas Mr. Mishra, learned advocate appears on behalf of respondent No. 3. With consent of all parties the matter is taken up for final disposal.

2.2 It may be noted that the petitioner joined service of Kalkadevi Bal Vidyalaya, Sihor (Dist. Bhavnagar)-respondent No. 3 on 9.11.1985 as a primary teacher. Respondent No. 3 terminated services of the petitioner by order dated 1.10.1990.

2.3 Being aggrieved and dissatisfied with the said action, the petitioner filed an application on 11.10.1990 before the Primary Education for reinstatement in service and backwages. The Tribunal by its judgement and award dated 21.5.1992 allowed the petitioner's application and directed respondent No. 3 authority to reinstate the petitioner in service and he should be paid backwages accrued from 1.7.1990 onwards. The Tribunal further directed that the petitioner should be paid current wages regularly in this behalf.

2.4 It appears that as respondent No. 3 did not implement the award of the Tribunal the petitioner was constrained to file application under Contempt of Courts Act in June, 1994 against respondent No. 3 School authorities. It was alleged that respondent No. 3 school deliberately disobeyed the order of the Tribunal

and therefore this court may initiate proceedings against respondent No. 3 authority.

3. The petitioner further stated that from 1.4.1995 respondent school brought under the purview of the direct payment scheme introduced by the Government Resolution dated 18.1.1991 as amended from time to time. It has been stated that this has been done in view of the judgement of this court in Special Civil Application No. 10207 of 1994 filed by the Headmistress of the respondent school and decided by this court on 1.4.1995. In spite of the aforesaid order, the District Primary Education Officer-respondent No. 4 has not sanctioned the salary of the petitioner.

4. In view of the said inaction of the respondent authorities, the present petition has been filed on 25.11.1996. It may be noted that the case of the petitioner is covered by the order of this court in Special Civil Application No. 10207 of 1994 passed by this court (Coram: H.L. Gokhale, J) on 1.4.1995 which reads as under:

"This petition was admitted on 5.9.1994 and notice as to interim relief was directed. From the Roznama it appears that the matter has appeared on board thereafter on three occasions, but the respondents have not cared to explain their stand. It is the grievance of the petitioner that she is not being paid her salary from 1.4.1992 through the District Education Officer. This grievance is reflected in her letter dated 2nd January, 1994, addressed to the Secretary, Education Department and annexed at Annexure-A to the petition. It is stated in the petition that the school wherein the petitioner is working is a recognised aided school and that being so, her salary ought to be paid through the District Education Office. This is submitted by Mr. Mishra on the basis of the Resolution of the Government in Education Department dated 16.6.1990 read with an amendment dated 16.5.1991. Respondent No. 2, therefore, to inquire and find out as to whether the petitioner is not being paid her salary directly, as claimed by her. In the event he finds that she is not being paid directly her salary, he is required to comply with the said resolution read with the aforesaid amendment and to see to it that the salary is paid directly to the petitioner. This order will be effective from the month of April, 1995,

thereby respondent No. 2 is expected to make the inquiry and comply with this order with respect to the salary of the month of April, 1995, payable at the end thereof. Salary for the subsequent months is also to be paid in the aforesaid manner. As far as the arrears, if any, claimed by the petitioner are concerned, the same will be looked into the next date of hearing."

5. In view of the aforesaid order, this petition is required to be allowed with costs throughout. It may be further directed that whatever arrears which the petitioner is entitled to, respondent No. 3 School will pay the same within three months from today. Respondent No. 3 school will also issue necessary payment order pursuant to the order of the Tribunal which has been confirmed by this court today.

6. In view of the same, this petition is allowed with costs. Rule made absolute.

(K.M. MEHTA, J)

(pkn)